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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ZHU ZHAI HOLDINGS LIMITED and
PETER PUI TAK LEE,

Plaintiffs,

-vs-

STEVEN IVANKOVICH,

Defendant.

Case No. 20 CV 04985

Chicago, Illinois

March 22, 2021

9:29 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUSAN E. COX, MAGISTRATE JUDGE

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1 (Proceedings heard in open court:)

2 THE COURTROOM DEPUTY: Case No. 20 CV 4985, Zhu
3 versus Ivankovich.

4 THE COURT: Good morning. Could you please --

5 MR. SEARS: Good morning, your Honor.

6 THE COURT: Could you please state your names and who
7 you represent, starting with the plaintiff.

8 MR. SEARS: Yes. Good morning, your Honor. This is
9 Will Sears, Quinn Emanuel, for the plaintiffs.

10 THE COURT: Thank you.

11 MR. SCHUMACHER: Good morning, your Honor. Daryl
12 Schumacher on behalf of defendant Ivankovich.

13 THE COURT: Good morning to you.

14 Okay. I guess the state of play is the plaintiff
15 filed a motion, and then the defendant filed a response, which
16 I would strike because you're not allowed to file a response
17 until the motion is heard, but then I saw that you filed the
18 motion to withdraw that, but attached your response, and then
19 the plaintiff replied to that.

20 Do I have that straight?

21 MR. SEARS: That's correct, your Honor.

22 MR. SCHUMACHER: Your Honor --

23 THE COURT: Okay.

24 Well, the whole point of hearing a motion is to kind
25 of maybe cut through some of the necessity for briefing

1 everything, so I -- I would like, if you wouldn't mind, first
2 with the plaintiff it seems to me that the major dispute
3 between the parties, and, again, I should say, I -- I really
4 didn't study the defendant's response carefully because it
5 came over the weekend, but it seemed to me from reading the
6 plaintiffs' motion that the heart of this dispute is discovery
7 of other entities besides the one that made the -- the one
8 that the plaintiff made the loan to.

9 Is that accurate?

10 MR. SEARS: Your Honor, this is Will Sears, Quinn
11 Emanuel.

12 I think --

13 THE COURT: Yeah.

14 MR. SEARS: -- that is accurate. I think there's --
15 I think that's a big part of the dispute. I think there are
16 two other issues that are somewhat --

17 THE COURT: Okay.

18 MR. SEARS: -- related but a little bit distinct.
19 And those actually --

20 THE COURT: Okay.

21 MR. SEARS: -- if it's okay with the Court, I'd like
22 to start with those other two because I think they're actually
23 fairly straightforward --

24 THE COURT: Sure, why don't you go ahead.

25 MR. SEARS: Thank you.

1 So the other two issues other than the Atlas
2 organization, one is about discovery into the collateral
3 securing these loans --

4 THE COURT: Mm-hmm.

5 MR. SEARS: -- and the other one is about litigation
6 involving the defendant and his assets, and I'll take those in
7 turn if that's okay.

8 THE COURT: Okay. Sure.

9 MR. SEARS: So regarding the collateral, and in terms
10 of the specific request, it's really Request 7 and Request 8.
11 Quite simply, these are secured loans. A big issue in the
12 case --

13 THE COURT: Yeah.

14 MR. SEARS: -- is what the security was and what the
15 economic value that our clients received for what the loans
16 were.

17 It's come out over the past few months and even in
18 defendant's response at Page 5 is that they think the
19 collateral is basically worthless. The collateral is largely
20 distributions from this entity called Overlook that the
21 defendant controls. He's now taken the position that Overlook
22 is not making any distributions. In other words, there's no
23 money coming out of it so the collateral, to his view, isn't
24 worth anything.

25 We think that's a huge (inaudible) the case. If

1 that's correct, the economic bargain that our client struck
2 was much different from what they realized, and we're just
3 trying to get some basic discovery into how it came to be that
4 what was pledged as collateral really has no value now that
5 the loans are in default.

6 THE COURT: How -- sorry -- hold on for a second.

7 (Dog barking in background.)

8 THE COURT: Okay. Sorry about that.

9 So what -- how long a time was it between the loan
10 being made and this acknowledgment that the collateral or your
11 discovery of the collateral that secured that loan was
12 basically worthless? What's the timeframe we're talking
13 about?

14 MR. SEARS: So there's two loans here, very similar
15 structures for both. One from plaintiff ZZH, Zhu Zhai
16 Holding, one from plaintiff Lee. The loans were made
17 respectively in late 2018, early 2019. I don't have the
18 exact --

19 (Cross-talking.)

20 THE COURT: That's okay. That gives me enough.

21 Okay. Go ahead.

22 MR. SEARS: When we found out that the collateral was
23 nothing was really after the loans defaulted, which was this
24 summer. Again, slightly different maturity dates, but the ZZH
25 loan matured June 15, 2020. The Lee loan matured July 31st,

1 2020.

2 It was after that when our client sought to enforce
3 their rights that we started hearing that, well, there's been
4 no distributions from this entity. And one of the things we
5 pleaded in our complaint is that we think that there may have
6 been things that were effectively distributions but were
7 perhaps called something else, and that those were
8 misappropriated, which would be a breach of the limited
9 guaranty agreement, but to figure out what exactly happened
10 and to what extent those were breached and if there were any
11 distributions by a different name and they were -- something
12 else was done with them, we'd really need some basic discovery
13 into the collateral.

14 THE COURT: Okay.

15 So basically you're -- with respect to this argument,
16 you're arguing and you're contending basically that Overlook,
17 which is now essentially bust -- might be bust because of
18 misappropriations of the funds (inaudible).

19 MR. SEARS: Kind of, although I think it's a little
20 more subtle. It's not clear to us really whether it's bust or
21 what the deal is.

22 One thing that we learned, again, just after we filed
23 the lawsuit and was in defendant's response at Page 5, is this
24 Overlook entity apparently doesn't even have a bank account,
25 which is very concerning to us.

1 As the defendant notes, he's produced a balance sheet
2 for Overlook. It's hard for us to understand how it has a
3 balance sheet but no bank account and how its distributions
4 were pledged as collateral if it has no account from which it
5 can make those.

6 THE COURT: Okay. And so what exactly are you
7 looking for?

8 MR. SEARS: I think this would be Request 7. We've
9 asked for --

10 THE COURT: Uh-huh.

11 MR. SEARS: -- all documents regarding the
12 collateral, and we give some specific examples.

13 I think on this, and really all of these requests,
14 your Honor, we're willing to be reasonable here. We don't
15 think --

16 THE COURT: Yeah.

17 MR. SEARS: -- this is a million-document case. We
18 don't want discovery to go on for years and years.

19 THE COURT: Right.

20 MR. SEARS: This is something where we could take --
21 we could take documents sufficient to show or we could come up
22 with a narrow set of search terms.

23 What we're concerned about is the scenario that we're
24 in now, where the defendant is selectively disclosing bits and
25 pieces of information but without a full picture. So we see a

1 balance sheet, but we don't understand what that means because
2 there's no bank account to go with it.

3 THE COURT: Uh-huh, uh-huh.

4 Okay. Defendant, why don't you tell me what's wrong
5 with that idea?

6 MR. SCHUMACHER: Thank you, your Honor.

7 THE COURT: I think -- you challenged relevance
8 primarily as I recall, correct?

9 MR. SCHUMACHER: That's correct, your Honor.

10 THE COURT: Okay.

11 Why isn't this relevant?

12 MR. SCHUMACHER: So I guess the first thing I would
13 disagree with is the conclusion that counsel made that their
14 collateral is worthless. This portfolio has an entity called
15 Overlook Managing Member at sort of the top of the
16 organization.

17 Below Overlook are five operating entities referred
18 to as the program entities.

19 THE COURT: Uh-huh.

20 MR. SCHUMACHER: That's -- and then there are
21 entities below that as well. Their collateral are
22 distribution rights from Overlook. Simply because Overlook
23 isn't distributing assets doesn't mean the collateral is
24 worthless. I think that's a false --

25 THE COURT: But aren't -- okay. But aren't you sort

1 of proving their point a little bit when you say that? I
2 mean --

3 MR. SCHUMACHER: Well, your Honor --

4 THE COURT: -- you're contending one thing about
5 Outlook, and the plaintiff is contending an entirely different
6 thing, and it seems to me the only way to get to the bottom of
7 whether this -- you know, what the evidence is on these
8 allegations is to give them this information.

9 MR. SCHUMACHER: Judge, what we've given them already
10 are bank accounts for all of the Pilgrim entities, as well as
11 the balance sheet for Overlook, which is at the top.

12 You know, I think the dispute is some of the things
13 they're looking for are deep, deep into this portfolio
14 beyond -- again, keeping in mind their collateral are just the
15 distribution rights. They want documents about refinancing
16 and very extensive --

17 THE COURT: Yeah, but -- but essentially they want to
18 test what you're saying --

19 MR. SCHUMACHER: Understood.

20 THE COURT: -- right?

21 MR. SCHUMACHER: And I think they want to test what
22 we're saying --

23 THE COURT: What's the problem?

24 MR. SCHUMACHER: -- give them --

25 THE COURT: I mean, take your word for it on that

1 particular point, it seems to me given the allegations in the
2 case, so --

3 MR. SCHUMACHER: Judge --

4 THE COURT: -- go ahead. Go ahead.

5 MR. SCHUMACHER: I'm not asking them to take my word
6 for it. We've given them all the bank accounts and the
7 operating -- I'm sorry, and the balance sheet for the
8 top-level entity.

9 And I'm not suggesting that, you know, maybe there's
10 some additional documents they'd be entitled to, but they seem
11 to want everything for the entire portfolio and relative to
12 the -- you know, the distribution rights from the top-level
13 entity that they're entitled to, I just think it's -- it's way
14 beyond the realm of anything that could be relevant. The
15 burden is --

16 THE COURT: Well, that's -- I mean, I heard the
17 plaintiffs say that they were willing try to come up with some
18 way to limit this discovery to test exactly what you're
19 saying, and it seems to me from even your -- I mean, I read it
20 briefly, but even your position is that -- well, you're
21 basically sort of closing the door on that --

22 MR. SCHUMACHER: I just think that there's --

23 THE COURT: -- as automatically -- it's automatically
24 not relevant, and I don't agree with that premise.

25 So it seems -- really, it doesn't make sense to me.

1 But I do understand that this is -- this is a, you know, a
2 complicated series of companies, but I don't agree that it
3 should be just not negotiable in terms of relevance. So I
4 think the best thing to do here is to have you guys talking
5 this through.

6 I don't think just saying stop is sufficient, and I
7 don't think if the balance sheet for Outlook is basically not
8 backed up by even a bank account, that suggests to me that
9 something more complicated is going on with respect to these
10 entities.

11 And I thought I read that the plaintiffs -- I guess
12 plaintiff pointed out that there was testimony, you know,
13 money kind of moved around in and among these entities, which
14 makes it more likely that there's something there.

15 I agree with you, and I think the plaintiff agrees
16 with you, that there should be limitations on this discovery,
17 and they've offered to try to negotiate that, but essentially
18 you put up a stop sign.

19 MR. SCHUMACHER: Your Honor, my only point is I don't
20 think they get unfettered access to the entirety of this
21 portfolio --

22 THE COURT: I don't think they're asking -- I don't
23 think they're asking for unfettered access. I think they're
24 asking -- you know, what I'm saying is you just said no.

25 Now, you're only giving -- you're only giving

1 information concerning this particular transaction and what
2 backs it up, but that doesn't -- I mean, I think that the
3 allegations kind of go beyond that.

4 MR. SCHUMACHER: Okay. And just for the record,
5 there is no allegation that there was misappropriation that
6 caused Outlook to be --

7 THE COURT: No, there was allegations that there was
8 fraud and intentional misrepresentation about --

9 MR. SCHUMACHER: The portfolio, the inducement to the
10 loan is what they're arguing. This is just the collateral to
11 the loan. The fraud that counsel has alleged is fraudulent
12 inducement to a loan.

13 THE COURT: Yeah, and what exactly would that be?

14 MR. SCHUMACHER: I guess my point, your Honor, is
15 they're not alleging misappropriate or fraud within this
16 portfolio of companies. They're alleging that a separate
17 loan, which is the subject of the lawsuit, they were
18 fraudulently induced into, indeed distribution rights served
19 as collateral. That's all.

20 THE COURT: Okay. But --

21 MR. SCHUMACHER: I understand your ruling though, I
22 understand --

23 THE COURT: Well, let me ask the plaintiff, what
24 about that? What about what he just said?

25 MR. SEARS: Yes, your Honor. I think we don't agree

1 with that characterization of our complaint. I've got it open
2 in front of me, and there are --

3 THE COURT: Yeah.

4 MR. SEARS: -- numerous places where we've alleged
5 that he misappropriated distributions. We say it in
6 Paragraph 6 in the preliminary statement of the complaint.

7 THE COURT: Yeah.

8 MR. SEARS: We say it in Paragraph (inaudible). It's
9 repeated throughout. In fact, one of our (inaudible) is of
10 the limited guaranties that we plead is that he
11 misappropriated distributions because under the guaranties,
12 that is one of the triggers that renders defendant liable.

13 THE COURT: Yeah.

14 MR. SEARS: He misappropriated distributions. So
15 it's within the four corners of the complaint, and he didn't
16 move to dismiss it.

17 THE COURT: All right.

18 Well, that was my sense, too, so I'm just not
19 understanding why this should be, you know, a forbidden topic.
20 I think -- you know what my feelings are, and I think you guys
21 need to, as the plaintiff actually suggested, get together and
22 figure out how to streamline this so that you're getting at
23 exactly what it is, what is relevant to these allegations
24 because I don't think they want every document from every
25 entity, every -- that's not what I -- that's not how I read

1 what they're saying.

2 But I also think that you've stymied that by just
3 sort of taking these issues, which seem very germane to what
4 the complaint says, just off the table, and you're not going
5 to do that. That's not going to fly I guess is what I'm
6 saying. I don't agree with that basic premise.

7 I do agree that there could be overbreadth issues and
8 they should be negotiated, and I'm going to order you to do
9 that with respect to these particular documents because I
10 don't think that negotiation has taken place.

11 Am I correct?

12 MR. SCHUMACHER: Your Honor, we've had a telephonic
13 meet-and-confer. The big issue was we're going to negotiate
14 search terms. It's going to be an electronic type of review,
15 but obviously we have some significant scope issues, one of
16 which you've just resolved.

17 But once we get past, in my view, the two big issues,
18 I know counsel has identified it as three, I think we can
19 negotiate search terms if you so order.

20 THE COURT: Okay.

21 So when you do do that, you're going to do it face to
22 face. And what I mean by that is you're going to either have
23 a Zoom or Teams or other video platform meeting so that you
24 can talk directly to each other and get to the bottom.

25 It seems to me that's more effective than chatting on

1 the telephone and sending emails back and forth. And,
2 frankly, my standing order requires it. Now we can't do it
3 actually in person. We can certainly do it via these
4 platforms.

5 Okay. So let's get to the litigation involving
6 defendants. What's the relevance of that, plaintiffs?

7 MR. SEARS: Thank you, your Honor.

8 And I'm sorry, I don't mean to belabor the point, but
9 I just had one clarification on the collateral.

10 THE COURT: Uh-huh.

11 MR. SEARS: So Request 8 is related to the
12 collateral. The collateral securing the Lee loan includes
13 proceeds from refinancing another loan from a third party
14 called Walker Dunlop. I just want to confirm that the Court's
15 order applies to that, and it's subject --

16 THE COURT: Agree.

17 MR. SEARS: -- to a face to face -- thank you.

18 THE COURT: Yeah, agree.

19 Really, what I want you to focus on, and I'm
20 stressing this to you, that just because I ruled it relevant
21 doesn't mean that you get everything you want. You need to
22 get really in good faith negotiate a scope of this particular
23 material.

24 Okay. So let's get to the litigation.

25 MR. SEARS: Thank you.

1 So, your Honor, I think the litigation issue is as
2 follows: Under Section 9 of both guaranty agreements, the
3 defendant made express representations that there were no
4 pending or threatened legal proceedings against him personally
5 or any of the defendant's assets that would have a material
6 adverse impact on him if adversely determined.

7 So it's an express representation. The breach of it
8 would trigger the limited guaranties, and we know, your Honor,
9 that that representation was not true because when he signed
10 at least one of the loans -- the guaranty agreements, there
11 was already a lawsuit on file against them, which has since
12 been resolved against the defendant and he's now currently
13 facing a judgment in that case.

14 So these litigation requests really all go to that
15 issue. We think they're clearly relevant to whether he
16 breached that express representation in the guaranty, and for
17 this one, we don't see any plausible burden objection because
18 it's essentially just a list of lawsuits involving the
19 defendant or his assets. We'll be reasonable on the timeframe
20 we're looking for. I don't think it can just be as of the
21 date that he signed the guaranties because the guaranties are
22 broader than that.

23 They speak in terms of threatened litigation. They
24 could also contemplate cases in which maybe the defendant or
25 one of his entities is a plaintiff but sort of sued first for

1 some tactical reason.

2 THE COURT: Yeah, yeah.

3 MR. SEARS: So we're happy to work that out similar
4 to the guidance the Court provided, but we don't think a
5 categorical relevance objection or even really significant
6 narrowing of these requests is appropriate, given that it's
7 within the four corners of the guaranty.

8 THE COURT: Remind me what your time frame was?

9 MR. SEARS: When we asked for this, I think we asked
10 for documents and a list of the lawsuits from 2017 to the
11 present. We'd be willing to narrow that. Our
12 understanding --

13 THE COURT: Yeah, I do think -- yeah, I do think you
14 do need to narrow that.

15 I understand why you can't just say, you know, on the
16 day of the -- of the closing because, you know, threatened
17 litigation is actually something that needs to be covered, and
18 you can't really do that by, you know, essentially limiting
19 the request (inaudible).

20 But I do think the timeframe is pretty narrow. I
21 don't think 2017 to the present by any means, so I'd like you
22 to negotiate that.

23 What does the defendant think an appropriate
24 timeframe for this would be?

25 MR. SCHUMACHER: Judge, if we're trying to capture

1 threatened and pending at the time he signed these documents,
2 which I agree is appropriate, six months before and six months
3 after would be fine.

4 Your Honor, my issue is not with what we've just
5 discussed. I have two issues with this. One, the guaranty,
6 where he makes the representations are with respect to himself
7 and the language "his assets" is in there. I think what --
8 what plaintiffs have requested is a problem in two respects:
9 One, they're requesting litigation for any of the 50-plus
10 Atlas entities; and, two, they're not just requesting the
11 listing of it. They're asking for all documents involved in
12 any case, and that --

13 THE COURT: Well, I -- I don't mean to cut you off,
14 but that's an overbreadth issue, which should be, as I said,
15 negotiated in good faith by the parties, and that needs to
16 take place.

17 I read assets pretty broadly though. Why wouldn't
18 the defendant's personal assets -- rather entity assets count?

19 MR. SCHUMACHER: Well, those are -- those are
20 entities in which he has a membership interest, but --

21 THE COURT: Well, that's an asset, is it not, by any
22 definition? I mean, it just is.

23 Like, again, this is -- to me, this is more a scope
24 issue than a relevance. I mean, I think -- you know, I'm not
25 faulting you. I don't think, you know, you've -- there's been

1 a lot of discovery in this case, you know, things have been
2 turned over and so on and so forth.

3 But just basically not really negotiating this, just
4 saying it's off the table doesn't make sense to it. Atlas is
5 a broad term, and I think it encompasses membership interests
6 in other assets or other entities, which it does.

7 Plaintiff, what do you think about the timeframe?

8 MR. SEARS: Thank you, your Honor.

9 THE COURT: Six months before and six after?

10 MR. SEARS: I think that's close. If it's okay with
11 the Court, I think what we'd like to do is think about it and
12 talk it over with Mr. Schumacher. The six months before
13 sounds about right.

14 I guess our concern with six months after is that
15 we're already aware of lawsuits that were hitting the docket
16 and potentially even proceedings involving some of the
17 defendants' personal assets that may have come about more than
18 six months after, but for some of them and one of them we
19 identify in our Requests for Production is a lawsuit the
20 defendant initiated over a foreclosure sale of one of his
21 portfolios of properties. Those things don't just come out of
22 the blue. There are usually pre-default notices and
23 discussions. I think we would --

24 THE COURT: Yeah.

25 MR. SEARS: -- want to make sure that whatever

1 timeframe we agree on, we're not losing emails that say we are
2 concerned you're going to default and we're going to sue you
3 for a lot of money just because it happens to be on month
4 seven.

5 THE COURT: Mm-hmm. Again, also, okay, that topic
6 should also be negotiated between the parties. I can see
7 going a little beyond six months, maybe nine months. I just
8 don't think the timeframe of 2017 to present is really -- is
9 really appropriate.

10 So, again, you can add this to your list of things to
11 do in your conference.

12 So what's the third issue?

13 MR. SEARS: Judge, before we move on, could I get one
14 point of clarification?

15 THE COURT: Sure.

16 MR. SCHUMACHER: I think some guidance would be
17 helpful on, you know, identifying litigation is one thing, but
18 one piece of litigation involves, as your Honor's aware, many,
19 many, many documents. I don't think they're necessary. Maybe
20 the complaint is necessary, but if you can just give us some
21 guidance because I know we're going to be negotiating that.

22 THE COURT: Well, I actually think, I actually think
23 this is more -- I mean, this is your case. You both know more
24 about it than I do. I don't -- I'm not going to tell you with
25 respect to, you know, all litigation, you know, what exactly

1 should be produced because it depends, and I think you guys
2 are a better -- in a better place than I am to draw those
3 kinds of distinctions.

4 And I think what happened in this case, which is
5 unfortunate, is those negotiations really didn't happen
6 because you sort of took this off the table with respect to
7 other -- you know, other entities, and now you're going to
8 have to, like, understanding that I don't think that bars this
9 discovery, you're going to have to negotiate about it.

10 And this is why I have my rule because it seems to
11 me, you know, briefing those isn't great, but you get more to
12 the bottom of this by talking, and what I think was really
13 important for me to say is that I think these relevance
14 objections are not appropriate. What is appropriate is
15 overbreadth with respect to some of the requests. I totally
16 see that.

17 But how that gets -- how that gets, you know,
18 resolved is really going to depend on your negotiations.

19 If at the end of your -- of your discussions you've
20 made a lot of progress but there are a few things that you
21 just need a ruling on, I'll do that.

22 But I'm not going to do it now because you haven't
23 done, in my mind, the hard work that is required to actually
24 bring this -- you know, bring this to the Court for an actual
25 ruling by sort of taking it off the table, and now you know

1 you can't do that. So it seems to me -- and now the plaintiff
2 knows that they need to narrow, but I think the plaintiff has
3 sort of always been willing to do that, but you can't get
4 there if you just, like I say, put a stop sign on it.

5 So what's the third issue? I've got to move on.
6 I've got other people.

7 MR. SEARS: Understood, your Honor. I'll try to be
8 brief.

9 The third issue is the Atlas organization. That one
10 I think is the one that's been briefed the most heavily, and I
11 think your Honor actually identified the key allegations here.

12 We allege in Paragraph 56 of our complaint that the
13 defendant testified under oath that he's moved money between
14 his entities and has the ability to do so, and we also alleged
15 and the defendant has admitted in his answer that one of the
16 things that was shown to our client during the preloan
17 discussions was projections and decks showing asset values for
18 different entities and portfolios of properties owned by
19 different Atlas entities, and the defendants can make
20 arguments at summary judgment as to why those are or aren't
21 actionable, but because they were some of the materials given
22 to our clients and we concluded they were some of the
23 inducements for this loan, we think that discovery into the
24 financial condition of the Atlas organization generally is
25 relevant.

1 This isn't a business that observes hard-and-fast
2 corporate distinctions. It's just not. The whole point of
3 the transaction and the materials that were shown to our
4 clients was that there were other entities that owned other
5 assets that produced income, and that was always on the table
6 as part of the deal.

7 THE COURT: Uh-huh. What do you say to that,
8 defendant?

9 MR. SCHUMACHER: Your Honor, I think there are two
10 Atlas entities involved here, which, by the way, they're not
11 suing. They're suing the guarantor. There are over 50 Atlas
12 entities that all are involved in real estate operations.

13 I made a proportionality argument. I think also many
14 of the other Atlas entities that weren't a borrower, weren't a
15 guarantor, and quite frankly had no relevance to this
16 transaction are -- you know, discovery as to those entities,
17 which would be extremely burdensome, the relevance is
18 disproportionate to the value in this case.

19 THE COURT: Well, normally I would agree with you,
20 but what your client said under oath gives me pause.

21 What do you have to say about that?

22 MR. SCHUMACHER: I think it's taken out of context.
23 It wasn't relating to any of these entities, and what he was
24 saying was he's the managing member of many of the LLCs,
25 but --

1 THE COURT: How was it taken out of context exactly?

2 MR. SCHUMACHER: Because it was with respect to -- it
3 was in one case in New York with respect to one particular
4 issue.

5 THE COURT: Plaintiff, what's your answer?

6 MR. SEARS: Your Honor, I think that we don't agree
7 that it was taken out of context. I'm sure that won't
8 surprise the Court. I think --

9 THE COURT: No, it does not.

10 MR. SEARS: -- going back and forth -- I think going
11 back and forth over how to interpret something that the
12 defendant said under oath in another lawsuit is a summary
13 judgment Rule 56 argument, not a Rule 26 argument.

14 We've pleaded that he doesn't observe corporate
15 formalities. We've pleaded that to induce our clients to make
16 the loans, he gave them projections about asset values for
17 properties owned by other Atlas entities and that those were
18 material and something they relied on as part of the deal.

19 He can make arguments at summary judgment as to why
20 that doesn't give rise to the claim. For now, we think it's
21 fair game for discovery.

22 I hear the Court and defense counsel on the burden
23 issues. Frankly, we don't want millions of documents from 50
24 different companies --

25 THE COURT: No, I don't expect -- I'm sorry, I

1 interrupted. I don't expect you do. I don't know why you
2 would want them.

3 MR. SEARS: Exactly. I think what we want, though,
4 is in an organization where literally every entity is called
5 Atlas blank LLC, we don't want documents about the defendant's
6 financial condition or the financial condition of his
7 organization generally to get left on the cutting room floor
8 because they just say Atlas or they say --

9 THE COURT: Right.

10 MR. SEARS: -- your financial troubles and they
11 reference an LLC that maybe wasn't the borrower in this case;
12 but as your Honor has noted, I really think that's a search
13 term and custodians issue. It's not a relevance issue.

14 THE COURT: Yeah, I don't think it's a relevance
15 issue either, but I never thought of the proportionality of
16 the discovery. And, again, that's something you have a better
17 idea about in terms of solving that problem than do I at this
18 point.

19 So, again, I need you to discuss it. So what I would
20 like you to do is take, you know, I don't know how long you
21 need, maybe a week, maybe two weeks, to have this discussion
22 and try to resolve sort of the burden issues that are part
23 of -- and timeframe with respect to litigation that are part
24 of each of these separate issues, and what you can't agree on,
25 and I really hope it ends up being nothing, but if you can't

1 agree on it, you'll -- I would -- what I typically do
2 (inaudible) but I order the conference and then order at the
3 end of the conference you file a joint submission as to what
4 remains for the Court to resolve, and it should be fairly
5 narrow with respect to each of these.

6 So that's what I'm going to do with this. So how
7 long do you think it will take you to have the
8 meet-and-confer?

9 MR. SCHUMACHER: Your Honor, this is Daryl
10 Schumacher.

11 I have an appellate argument later this week, so if
12 we could make two weeks part of the suggestion.

13 THE COURT: Yeah, okay. That's fine.

14 So you have 14 days to have your meet-and-confer by
15 video, and then you can file (inaudible) let's say seven days,
16 and it's a joint submission, specifically defining what you
17 were not able to agree on, and -- and as I said, I would hope
18 in a good-faith negotiation, now that you've gotten something
19 from the Court, you would be able to resolve many of these
20 issues.

21 So that will be the Court's order today. Like I
22 said, the submission should be joint, and if you want to, you
23 can say a little bit about what your position is each, but,
24 again, I hope that those will be relatively -- you won't have
25 a lot of those.

1 And if we do, then you're just going to have me make
2 a call, and that, really, I always tell people, cases like
3 that, you know the landscape a lot better than I will ever do,
4 but to some extent when you present me with, you know, these
5 kinds of issues, it's really going to be, you know, I don't
6 want to say arbitrary, but I'm just going to take my best
7 whack at it, and you're going to have to live with the
8 results.

9 So I often think what the parties can negotiate
10 themselves is more valuable. But, again, that's the order for
11 today. Okay, is everybody clear? I have to move on to the
12 next case.

13 MR. SCHUMACHER: Yes, your Honor.

14 MR. SEARS: Yes, your Honor. Thank you.

15 THE COURT: All right. Thank you very much.

16 | Bye-bye.

17 (Which were all the proceedings heard.)

18 CERTIFICATE

19 I certify that the foregoing is a correct transcript from
20 the digital recording of proceedings in the above-entitled
21 matter to the best of my ability, given the limitations of
22 using a digital-recording system.

23 | /s/Kathleen M. Fenne11

March 22, 2021

24 Kathleen M. Fennell
Official Court Reporter

Date

25